

**BOARD OF APPEALS CASE NO. 5373**

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**BEFORE THE**

**APPLICANT: Gurvis & Margaret Jones**

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**ZONING HEARING EXAMINER**

**REQUEST: Special exceptions and  
variances for construction services and  
commercial vehicle and equipment storage  
on less than 2 acres; 1220 - 1222 Prospect  
Mill Road, Bel Air**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 8/27/03 & 9/3/03**

**HEARING DATE: October 22, 2003**

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**Record: 8/29/03 & 9/5/03**

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### **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Gurvis Jones and Margaret Jones, are requesting a special exception and variance, pursuant to Section 267-53H(1) of the Harford County Code, for construction services and suppliers with less than the 10 foot buffer yard; a special exception and variance pursuant to Section 267-53D(1) and D(1)(c), for commercial vehicle and equipment storage on less than the required 2 acres (1 acre existing); and a variance pursuant to Section 267-34C, Table II, to allow a shop/garage and 6 storage sheds on Parcel 611 to be closer than the required 40 foot side yard setback in an Agricultural District.

The subject parcels are located at 1220 and 1222 Prospect Mill Road, Bel Air, Maryland 21015, in the Third Election District, and are more particularly identified on Tax Map 41, Grid Numbers 1D and 2D, Parcels 264 and 611. Parcel 264 contains approximately 1.34 acres, and Parcel 611 contains approximately 1.0 acres.

The Applicant, Gurvis B. Jones, appeared and testified that he owns not only both of the subject parcels, but also the lots which adjoin them to the east and west. He identified the subject parcels as 1220 and 1222 Prospect Mill Road, and the adjoining parcels as 1218 and 1224 Prospect Mill Road. Mr. Jones stated that he has resided on the property since 1965. He further testified that he began a well drilling business in 1964. The business was relocated to the subject parcels in 1965 and has operated continuously thereon since that date.

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According to Mr. Jones, the shop/garage building which houses the aforesaid business was constructed in 1968 and expanded in 1976. The shop was built pursuant to a valid permit, and met all setback and zoning requirements in effect at the time of construction. As stated in the Application and Staff Report, Parcel No. 264 (1220 Prospect Mill Road) contains a one-story brick dwelling, a blacktopped driveway with two parking areas, and a 160 square foot frame shed. Parcel No. 611 (1222 Prospect Mill Road) contains a double-wide mobile dwelling, a 96 square foot frame shed, a 408 square foot frame shed, a 3,100 square foot brick building, and six 160 square foot frame sheds.

Mr. Jones testified that his well drilling business provides services primarily conducted in the field, and that the equipment used in the operation of said business is usually stored at various job sites. Some equipment is occasionally stored on the subject property, however, the well drilling rigs are left there only when in need of repair. The business employs five individuals, including the Applicant, and his son-in-law who resides at 1218 Prospect Mill Road. The witness indicated that his business generates very little traffic.

The Applicant next testified that he had read the Department of Planning and Zoning Staff Report, and accepts all conditions proposed therein. He further indicated that he had reached an agreement with the Department of Planning and Zoning regarding an additional stipulated condition. The stipulated condition would require him to retain ownership of both subject parcels for the duration of any special exception use granted pursuant to the subject Application. Mr. Jones also stated that that he is willing to move the six 160 square foot frame sheds located at the rear of Parcel 611 (1222 Prospect Mill Road) to a distance of 80 feet from the rear property line and 40 feet from the western property line. Once the aforesaid sheds are moved, the only building left within required 40 foot side yard setback will be the 3,100 square foot shop/garage. That building is located 16 feet from the western property line. The witness also pointed out that the required 40 foot setback in this case is from adjoining Parcel 167 (1224 Prospect Mill Road) which is also owned by him.

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Twenty-eight neighboring property owners appeared in support of the Application, including those whose properties adjoin the Applicants' four lots on either side (1216 and 1226 Prospect Mill Road, respectively) and the owner of the property which extends across the entire frontage of the subject parcels on the opposite side of Prospect Mill Road.

Mr. Anthony McClune, Chief, Current Planning Division, appeared and testified on behalf of the Department of Planning and Zoning regarding the findings of fact, and recommendations made, by that agency. Mr. McClune indicated that the Department recommended approval in its October 8, 2003 Staff Report, subject to five conditions set forth therein. He also stated that the Department had agreed to stipulate to a sixth condition requiring the Applicants to retain ownership of both parcels for the duration of any special exception granted in this case.

According to Mr. McClune, the special exception use requested pursuant to Section 267-53H(1) of the Harford County Code would cause no adverse impact to adjoining properties over and above that which would occur if the use were located elsewhere within the District. He based this opinion on the fact that the Applicant's business is limited in scope, produces little traffic, and the equipment used for operation of the business is generally stored offsite. The witness further testified that once the six 160 square foot frame sheds on Parcel 611 (1222 Prospect Mill Road) have been moved 40 feet from the western property line, the Applicants will meet all requirements set forth in the above referenced Code Section.

Mr. McClune then addressed the special exception and variance requested pursuant to Harford County Code Sections 267-53D and 267-53D(1). He stated that he has visited both the subject parcels, and adjoining properties, and that the business cannot readily be seen from either Prospect Mill Road or any adjacent property. He confirmed that the Applicants actually own four adjacent parcels (as opposed to the three indicated in the Staff Report) and that they operate their business only from the two middle parcels (Nos. 264 & 611).

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The witness also indicated that the Applicants originally offered to combine the subject parcels into one lot, in order to meet the minimum two acre lot size required by the above Code provision. However, he stated that the two parcels cannot technically be combined without relocating one of the two dwelling units, because the Code permits only one dwelling unit per lot. He did opine that the proposed condition requiring Applicants to retain ownership of both lots for the duration of any special exception would satisfy the intent of the Code, because the two lots together are large enough to satisfy the two-acre lot size requirement.

Mr. McClune then testified that the Department had found the subject parcels to be unique because two of the four adjoining parcels are actually owned by the Applicants. The setback requirements are, therefore, designed to insure a minimum setback from adjoining parcels owned by the Applicants themselves. In addition, the properties are surrounded by heavily wooded areas which screen them from view of adjacent properties.

The witness also indicated that the Department had considered all provisions set forth in Section 267-9I in connection with the requested special exceptions, and determined that the subject requests meet all criteria set forth therein. He testified that “[t]he Applicant had operated his business from this location since 1965” and that “the request should not impact persons living in the area.” He also indicated that the business generates very little traffic. Any traffic actually generated can be easily absorbed by Prospect Mill Road, which has good site distance at the location of the subject properties. Mr. McClune further testified that “[t]he request should have no adverse fiscal impact to the County and that, in his opinion, “the vehicles and equipment will be stored inside the building” and that minor equipment repairs will have no adverse impact upon surrounding properties if they are “ limited to the hours of 9:00 a.m. and 5:00 p.m.”

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According to Mr. McClune, the granting of the requested special exceptions will have no impact on any county facilities, or on nearby schools, churches, sensitive environmental areas, recreational or open space or cultural or historic landmarks. Mr. McClune further testified that the requested special exception uses are consistent with both generally accepted engineering and planning principals, and the purposes set forth in the County's Land Use Plan.

No witnesses appeared in opposition to the requested variance.

## **CONCLUSION**

The Applicants, Gurvis & Margaret Jones, are seeking a special exception pursuant to Section 267-53H(1) of the Harford County Code, to operate a construction services business and equipment storage facility in an AG District with less than the required 10 foot buffer yard; and a special exception pursuant to Section 267-53D(1) and Section 267-53D(1)(c), to allow storage of commercial vehicles and construction services vehicles and equipment in an Agricultural District on a parcel of land containing less than the required 2 acres.

Harford County Code Section 267-53, entitled "Specific Standards", states:

"The special exceptions enumerated herein, in addition to other conditions as may be imposed by the Board, shall comply with the following requirements:"

Section 267-53H(1) of the Harford County Code provides:

"Services.

- (1) Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to a residential lot or visible from a public road."

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Section 267-53D(1) of the Harford County Code allows special exceptions for motor vehicles and related services to be conducted in an AG District, stating :

**Motor vehicle and related services.**

- (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:**
  - (a) The vehicles and equipment are stored entirely within an enclosed building or are fully screened from view of adjacent residential lots and public roads.**
  - (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.**
  - (c) A minimum parcel area of two (2) acres shall be provided.**

Relevant general provisions of the Harford County Code pertaining to special exception uses are set forth below.

Section 267-51 of the Harford County Code provides:

**"Purpose.**

**Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1."**

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**Section 267-52 of the Harford County Code states:**

**"General Regulations.**

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.**
- B. A special exception grant of approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.**
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.**
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.**
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof."**

**Section 267-9I of the Harford County Code sets forth the following conditions for consideration by the Board in connection with the granting of special exception uses:**

**"Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:**

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- (1) The number of persons living or working in the immediate area.**
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.**
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.**
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.**
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.**
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.**
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.**
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.**
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.**
- (10) The preservation of cultural and historic landmarks.”**



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The Court of Appeals established the standard for determining whether to grant a special exception in the case of Schultz v. Pritts, stating :

"...[t]he special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. " (*Emphasis in original*) 291 Md. 1, 11, 432 A.2d 1319 (1981).

The Schultz court further held that "the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." 291 Md. At 15, 432 A.2d at 1327; citing, Anderson v. Sawyer, 23 Md. App. at 624-25, 329 A. 2d at 724 (1974) and Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31, 214 A.2d 146 (1965).

The Hearing Examiner finds that the Applicants have met their his burden of proving that the requested special exception uses either meet the standards and requirements prescribed by the Harford County Code, or *will* meet those standards if the requested variances are granted.

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Harford County Code Section 267-53H(1) provides for the granting of special exceptions in the AG District for the operation of construction services and suppliers “provided that a buffer yard of ten feet wide is provided around all outside storage and parking areas when adjacent to a residential lot or visible from a public road.” The subject property is zoned Agricultural. The only structures currently located within the required 10-foot buffer are six 160 square foot frame storage sheds on Parcel 611 (1222 Prospect Mill Road). The Applicants have agreed to abide by a proposed condition requiring them to move all of these sheds to a distance of 40 feet from the western property line.

Harford County Code Section 267-53D and D(1) allow special exceptions for the operation of motor vehicle and related services, or commercial vehicle and equipment storage if the vehicles and equipment will be either stored entirely within an enclosed building or are fully screened from view of adjacent residential lots and public roads” and “a minimum parcel area of two (2) acres” is provided.

The subject parcels are located within the AG District. All vehicles, and equipment will either be stored within enclosed buildings, or in areas which that are fully screened from view by adjacent property owners. Neither of the subject parcels is large enough to meet the minimum 2-acre lot size required for operation of the existing business. However, the combined size of the parcels exceeds two acres in size. Applicants originally offered to combine the subject properties into one lot in order to meet this requirement. However, according to Mr. McClune, the lots cannot be technically combined unless one of the existing homes is removed , because the Code allows only one dwelling unit per lot. In response to this dilemma, the Applicants and the Department, stipulated to a proposed condition requiring the Applicants to retain ownership of both parcels for the duration of any granted special exception. The proposed condition meets the intent of the Code by ensuring that the subject business is conducted on a lot exceeding two acres in size.

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The Hearing Examiner also finds that the Applicants have met their burden of proving that the proposed use, at the proposed location, would have no adverse impact to adjoining properties over and above that which would occur if it were conducted elsewhere in the District. The Applicants' business is small, produces little or no traffic, and equipment is rarely stored onsite. The subject properties are screened from view of by adjacent property owners by heavily wooded areas, and the business is primarily visible only from the subject parcels themselves. In addition, the Applicants own the properties adjoining either side of the subject parcels. Finally, not only was there no opposition testimony presented in the subject case, but almost thirty neighboring property owners appeared in support of the Application.

The Hearing Examiner adopts the findings of the Department of Planning and Zoning, that the proposed use meets all criteria set forth in Section 267-9I of the Harford County Code, because the Applicant's business can be conducted without adversely affecting the public interest, and is in harmony with the general purpose and intent of the plan.

The Applicants are also seeking variances pursuant to Sections 267-53H(1) of the Harford County Code to permit construction services and suppliers with less than the 10 foot buffer yard, pursuant to Sections 267-53D(1) and 267-53D(1)(c) for commercial vehicle equipment and storage on less than the required 2 acres (1 acre existing); and pursuant to Section 267-34C, Table II, to allow a shop/garage and 6 storage sheds on Parcel 611 (1222 Prospect Mill Road) to be closer than the required 40 foot side yard setback in an Agricultural District.

Harford County Code Sections 267-53H(1), 267-53D(1) and 267-53D(1)(c) were set forth in their entirety previously in this decision. Harford County Code Section 267-34C, Table II, requires a minimum 40 foot side yard setback for retail trade/services located within the Agricultural District.

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Section 267-11 of the Harford County Code permits the granting of variances, stating:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if there is a finding that a peculiar characteristic or unusual circumstance relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. *Cromwell, supra*, at 721. If the subject property is found to be unique, the hearing examiner may proceed to the second prong of the test. The second prong requires a determination as to whether literal enforcement of the zoning ordinance with regard to the unique property would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique because the Applicants own a total of four lots, including those adjoining both the eastern and western property boundaries of the subject parcels. The subject business is actually conducted only from the two middle lots owned by the Applicants. The rear portion of each subject parcel is heavily wooded, and therefore screened from view by the adjoining rear property. There was no opposition testimony introduced to contradict any of these findings, all of which are supported by both the Department of Planning and Zoning Staff Report, and testimony presented in this case. Thus, the first prong of the Cromwell test has been met.

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Having first found that the subject property is unique, it must next be determined whether denial of the requested variance would create an unreasonable hardship or practical difficulty for the Applicants in this case. The Hearing Examiner finds that literal enforcement of the Code would result in unreasonable hardship to the Applicants. If the requested variances are not granted, they will be required to either relocate a business which has operated on their property for almost 40 years, or go to the considerable expense of moving an existing 3,100 square foot building and several large sheds. The shop/garage in question was built pursuant to a valid permit, and complied with all zoning regulations in existence at the time of construction.

Finally, the Hearing Examiner finds that the granting of the requested variances will not have any adverse impact on, or be substantially detrimental to adjacent properties, or materially impair the purpose of this Code or the public interest. As previously discussed, the proposed condition requiring the Applicants to retain ownership of both Parcels 611 (1222 Prospect Mill Road), and 264 (1220 Prospect Mill Road) allows the Applicant to meet the intent of Code Sections 267-53D(1) and 267-53D(1)(c) by providing a minimum lot size in excess of the required 2 acres. Because the Applicants agreed to move the six 160 square foot frame sheds on Parcel No. 611 (1222 Prospect Mill Road) 40 feet from the western property line, only the 3,100 square foot shop/garage building will remain within the 40-foot side yard setback required by Section 267-34C, Table II. The existing business is located to the rear of the subject parcels and is not visible from Prospect Mill Road. The property which adjoins the subject parcels to the rear is heavily wooded and, therefore, screened from view. The Applicants own the parcels on either side of the subject properties. The applicable setback requirements in this case are therefore designed to protect adjoining properties which are actually owned by the Applicants.

Finally, not only was there no opposition testimony introduced, but at least twenty-eight neighboring property owners personally appeared in support of the subject application. These individuals included persons whose properties adjoin either side of Applicants' four lots, and whose property is located directly across the street from the subject parcels.

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The Hearing Examiner recommends approval of the Applicants' requests, subject to the following conditions:

1. The Applicants shall obtain all necessary permits and inspections for the existing uses and structures.
2. The Applicants shall store all vehicles and equipment within the existing building, and pipe storage shall be located in such a manner that it is fully screened from both the adjacent properties and Prospect Mill Road.
3. No major repairs to the vehicles and equipment shall be performed on site. This condition does not preclude general maintenance to keep the vehicles and equipment in good working condition.
4. All on-site general maintenance servicing of vehicles and equipment shall be done between the hours of 9:00 a.m. and 5:00 p.m.
5. This approval is for the Applicants use only and shall terminate when the property is sold or transferred.
6. The Applicants shall retain ownership of both Parcel No. 611 (1222 Prospect Mill Road) and Parcel No. 264 (1220 Prospect Mill Road ) for the duration of the term of the special exceptions granted herein.
7. That the Applicants not encroach further into the setback than the distance requested herein.

Date     JANUARY 13, 2004

Rebecca A. Bryant  
Zoning Hearing Examiner